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No. 305

In the Supreme Court of the United States

OCTOBER TERM, 1951

CITIES SERVICE COMPANY, AND THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, PETITIONERS

v.

J. HOWARD MCGRATH, ATTORNEY GENERAL, AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The opinion of the United States District Court for the Southern District of New York (R. 43) is reported at 93 F. Supp. 408. The opinion of the United States Court of Appeals for the Second Circuit (R. 55) is reported at 189 F. 2d 744.

JURISDICTION

The judgment of the Court of Appeals was entered on June 13, 1951 (R. 62). The petition for a writ of certiorari was filed on September 8, 1951. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

The statute here involved is the Trading with the Enemy Act, 40 Stat. 411, as amended, 50 U.S.C. App. §§ 1-40. Petitioners have set forth in the Appendix to their Petition, Sections 5(b), 7(c) and 9(a) of the Act. Other pertinent provisions are Sections 7(a), (b), (e), 9(n) and 40, which are set forth in the Appendix hereto, at pp. 18-21.

QUESTIONS PRESENTED

1. Whether the provisions of the Trading with the Enemy Act which authorize the vesting of "any property or interest", including "choses in action and rights and claims of every character and description", confer the right to enforce an obligation of a domestic corporation evidenced by a negotiable bearer bond not itself seized.

2. Where the Custodian has vested an obligation determined to be enemy owned, is the certain availability of a remedy to protect the American obligor from the consequence of a foreign court's possible refusal to recognize the seizure necessary to the constitutional validity of the Custodian's action.

STATEMENT

On March 11, 1949, the respondent, as successor to the Alien Property Custodian,[1] issued Vesting Order No. 12960, 14 F.R. 1405 (R. 8-10). By that

[1] By Executive Order No. 9788 (11 F.R. 11981, October 14, 1946), the Attorney General succeeded to the powers and duties of the Alien Property Custodian. In this brief, the term "Custodian" will be used, as the context may require, to refer either to the Alien Property Custodian or to the Attorney General as his successor.

Order, he vested in himself the debts or obligations evidenced by three Cities Service Company 5% Gold Debenture Bearer Bonds of $1,000 face value each, upon findings that the obligations were owned by, or owing to, a named resident of Germany and national of a designated enemy country. The Order further identified the bonds as bearing serial numbers M 23293, M 23318 and M 7029 (R. 8-9). A copy of the Order was served on the Company (R. 11) and, by subsequent letters, the Company was directed to cancel two of the bonds which had been called for redemption, and to issue in lieu thereof its check representing the proceeds of redemption with accrued interest. The Company was also directed to cancel the third bond and to issue in lieu thereof a new bond and to have affixed thereto the number of coupons which had not been presented for payment. (R. 13-20.)

One of the bonds (M 23293) had been paid prior to the issuance of the vesting order, and, with respect to this one, the Custodian withdrew his claim (R. 32). Neither of the two bonds remaining in issue is in the possession or control of the Custodian. One (M 7029) is apparently in possession of Dominick & Dominick, a brokerage firm in New York City. The present location of the other (M 23318) is unknown. The bonds were reported to have been in Berlin prior to the issuance of the vesting order. (R. 32-33.)

The indentures under which the bonds were issued designated the Chase National Bank of the City of New York as trustee and paying agent (R.

25). Upon the Company's failure to comply with the Custodian's demand, the Custodian instituted the present action under Section 17 of the Trading with the Enemy Act (40 Stat. 425, 50 U.S.C. App. 17), in which the Bank was joined as defendant, seeking payment of the obligations or the issuance of new bonds (R. 3-7). Each party moved for summary judgment (R. 37, 39, 41). The District Court held that the location of the bonds outside the United States placed the obligations they represented beyond the reach of the Custodian's authority on the ground that the obligations have no existence apart from the bonds (R. 47-48). Accordingly, it granted the petitioners' motions for summary judgment (R. 49-50).

The Court of Appeals reversed and directed summary judgment for the respondent (R. 62). The court held that the Trading with the Enemy Act granted the power to reach obligations of an American debtor evidenced "by bonds outside the country, as well as any of other alien held choses in action" (R. 58). It further held that the power of the United States to do so is not affected by the physical location outside the United States of the bond, so long as the obligor is present in this country. The Court of Appeals also indicated that the petitioners will have a claim against the government in the event that a foreign court refuses to recognize payment to the respondent as a defense and enters judgment against them in a suit by the bondholder. The court assumed "for argument that, if it were true that [petitioners] remain ex-

posed to such a recovery, and will have no consequent claim against the Treasury for recoupment, a judgment against them will 'take' their property without compensation in violation of the Fifth Amendment" (R. 59). Since the court was satisfied that petitioners would have a claim, it did not reach the constitutional question which it assumed the absence of a claim would raise.

ARGUMENT

1. The court below held that the obligation of a domestic corporation to an enemy national may be vested under the provisions of the Trading with the Enemy Act, notwithstanding that it is evidenced by a negotiable bearer bond not itself seized. This holding is in accordance with the comprehensive language of the Act and its purpose, repeatedly acknowledged by this and other courts, to reduce to possession all property from which the enemy could draw advantage.

Section 5(b) of the Act, as amended by Title III of the First War Powers Act of 1941, in broad terms confers the authority to vest "any property or interest of any foreign country or national thereof * * *." Section 7(c) more explicitly provides that "If the President shall so require any money or other property including * * * choses in action, and rights and claims of every character and description owing or belonging to * * * an enemy * * * shall be * * * paid over to the * * * Custodian, or * * * may be seized" by him.[2] As this Court has

[2] The authority under Section 5(b) is delegated to the Custodian by Executive Order No. 9095, March 11, 1942,

repeatedly declared, these provisions are designed to reduce to possession all enemy property that can be reached so as to prevent enemy use thereof and to permit affirmative use by the United States. *Propper* v. *Clark*, 337 U.S. 472, 481, 484; *Silesian-American Corp.* v. *Clark*, 332 U.S. 469, 476; *United States* v. *Chemical Foundation*, 272 U.S. 1, 9-10.

Unquestionably, the Act authorizes the seizure of "debts." *McGrath* v. *Manufacturers Trust Co.*, 338 U.S. 241, 246; *Propper* v. *Clark*, 337 U.S. 472.[3] And the comprehensive statutory language and the

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7 F.R. 1971, as amended by Executive Order No. 9193, July 6, 1942, 7 F.R. 5205, and Executive Order No. 9567, June 8, 1945, 10 F.R. 6917.

By a series of Executive Orders, the powers granted by Section 7(c) have been delegated to the present Custodian. Executive Orders No. 2729-A, October 12, 1917, set out in Meares, *The Trading with the Enemy Act*, pp. 559, 566; No. 2813, February 26, 1918, *id.* p. 584; No. 3016, December 3, 1918, *id.* p. 617; No. 6694, May 1, 1934, 28 C.F.R. (1st ed. 1939) § 4.1; No. 8136, May 15, 1939, 4 F.R. 2044; No. 9142, April 21, 1942, 7 F.R. 2985; No. 9788, October 14, 1946, 11 F.R. 11981.

That the Custodian, "in taking over the administration of the Trading with the Enemy Act, is entitled to the full scope of its permanent provisions whether found in Section 5(b) * * * or elsewhere" is not open to question. *Markham* v. *Cabell*, 326 U.S. 404, 423-424 (concurring opinion).

[3] To the same effect: *Mutzenbecher* v. *Ballard*, 16 F. 2d 173 (S.D.N.Y.), affirmed, 16 F. 2d 174 (C.A. 2); *Rumely* v. *United States*, 293 Fed. 532, 548 (C.A. 2), certiorari denied, 263 U.S. 713; *American Exch. Nat. Bank* v. *Garvan*, 273 Fed. 43 (C.A. 2), affirmed *sub nom. Simon* v. *American Exchange Nat. Bank*, 260 U.S. 706; *Miller* v. *Rouse*, 276 Fed. 715 (S.D.N.Y.); *Kohn* v. *Jacob & Josef Kohn*, 264 Fed. 253 (S.D.N.Y.).

scheme of Section 7 leave no doubt of a legislative purpose to include all debts, however evidenced. Thus, Section 7(a) requires any person "indebted in any way" to an enemy to report the fact to the Custodian. Section 7(b), which was aimed at transfers to neutrals by enemy obligees, declares that the transferee shall have no right or remedy against the obligor by virtue "of any assignment, indorsement, or delivery to him of any debt, bill, note, or other obligation or chose in action by * * * an enemy." Section 7(c), as already noted, authorizes seizure of "any * * * property including * * * choses in action, and rights and claims of every character and description." Section 7(e), dealing with the discharge of the obligation paid over to the Custodian, provides that the Custodian "shall, in case of payment to * * * [him] of any debt or obligation owed to an enemy * * *, deliver up any notes, bonds, or other evidences of indebtedness or obligation * * * that may have come into [his] possession * * *."

The authority conferred by Section 7(c) to reach a bonded indebtedness without seizure of the bond itself is explicitly reaffirmed by the provisions of Section 9(n) of the Act. 45 Stat. 272, 50 U.S.C. App. 9(n). That Section was added in 1928 by the Settlement of War Claims Act which provided in general for the return of 80% of all seized property. For the cases where a stock or bond interest had been seized without actual seizure of the stock certificate or the bond, Section 9(n) provided for an 80% return to the current owner

of the instrument.[4] By this provision, Congress in terms affirmed the Custodian's power to seize an interest represented by a bond irrespective of whether he had taken the actual instrument.[5]

There is not a word in any of these statutory provisions which would warrant attributing to Congress a purpose to except from the broad authority thus conferred the power of the Custodian to seize an interest because it is represented by a negotiable bond or because the holder of the bond is not within the United States. Indeed, to impute such a purpose to Congress would be, *pro tanto,*

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[4] Section 9(n) provides:

"In the case of property consisting of stock or other interest in any corporation * * * or of bonded or other indebtedness thereof, evidenced by certificates of stock or by bonds * * * where the right, title, and interest in the property (but not the actual certificate or bond * * *) was * * * seized by [the Custodian]," the current owner would be entitled to an 80 per cent return as provided in Section 9(b).

[5] Congressional awareness of the authority to seize stock and bond interests without seizure of the actual instrument is shown by Report No. 273 of the Senate Committee on Finance on H.R. 7201, 70th Cong., 1st Sess., p. 30, which states:

"'Subsection (n) meets the situation which has arisen by reason of the fact that certain corporate interests were seized without obtaining custody of the certificate evidencing those interests. As a result the certificate has been sold in Germany and is being dealt in daily on the German exchanges. Although the committee was convinced that it could not adopt a policy of general recognition of assignments, it seemed imperative that this situation be met. Accordingly, subsection (n) provides for the recognition of the various assignments and for payment to the present owner of the certificate. In order to prevent evasion, however, it is necessary to limit the return, irrespective of the citizenship of the present owner, to the 80 per cent. * * *'"

to frustrate its ultimate aim in enacting the Trading with the Enemy Act: to permit of reduction "to possession by the United States in furtherance of the war effort" of "any property in this country of any alien." *Silesian-American Corp.* v. *Clark,* 332 U.S. 469, 475-476.

It is, of course, true that the property of the alien must be "in this country." *Ibid.* And it is submitted that the court below properly held that that requirement was met in this case. Of course, an intangible obligation to pay, whether evidenced by a bond or negotiable instrument or not, has no "situs" in the sense of location in space. See *First Nat. Bank* v. *Maine,* 284 U.S. 312, 328, 332; Powell, *The Business Situs of Credits,* 28 W. Va. L.Q. 89. What matters for purposes of "jurisdiction", as the decisions of this Court have established, is that the obligor is here and can be made to pay. *Standard Oil Co.* v. *New Jersey,* 341 U.S. 428; *Curry* v. *McCanless,* 307 U.S. 357, 365-367; *State Tax Comm'n* v. *Aldrich,* 316 U.S. 174 (overruling *First Nat. Bank* v. *Maine, supra,* on other grounds). In a real sense, there is property here which can be effectually dealt with when an obligor is here. *Harris* v. *Balk,* 198 U.S. 215, 222-223; *Chicago, Rock Island etc. Ry.* v. *Sturm,* 174 U.S. 710, 715-716. Cf. *Canada Southern Ry. Co.* v. *Gebhard,* 109 U.S. 527. The bond itself would be substantially worthless if the United States would not enforce its recognition by the obligor.[6]

[6] The presence of the obligor has been held a sufficient basis for the attachment of a debt represented by a negotiable

The seizure during time of war of a debt evidenced by a bond not itself taken represents no new policy.[7] It was sanctioned in the days of this country's struggle for independence (See *Ware* v. *Hylton,* 3 Dall. 199, 264-265) as well as by the Confiscation Acts of 1861 and 1862 (Act of August 6, 1861, 12 Stat. 319; Act of July 17, 1862, *idem.* 589). *Miller* v. *United States,* 11 Wall. 268, 296; *Alexandria* v. *Fairfax,* 95 U.S. 774, 779; *Brown* v. *Kennedy,* 15 Wall. 591; see also *Pelham* v. *Way,* 15 Wall. 196, 201-202. It is also the policy of other countries, notably South Africa, Great Britain and

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instrument not itself seized, although many states have statutes which have been interpreted not to permit an attachment in the case of negotiable instruments because of a policy against subjecting the obligor to the danger of double liability. See the cases noted in 38 C.J.S. § 102 and 71 A.L.R. 581.

Since *Bank of Jasper* v. *First Nat. Bank,* 258 U.S. 112, relied on by petitioners (Pet. 12), concerned the power of a court "to determine the liability of maker to holder" in a case in which neither the holder nor the negotiable instrument was within the court's jurisdiction, it can have no application here. For there has been no attempt in this case to secure a determination that the petitioners, the "maker", are not liable to the holders of the bond instruments. Indeed, it is the petitioners' fear that they remain liable to the "holders" that gives rise to their complaint discussed *infra,* pp. 12-16.

[7] The absence of World War I cases involving domestic bearer bonds located abroad has not been due to any supposed lack of authority with respect to such bonds. At that time, vesting of bonded debts without seizure of the instruments was the exception because of the difficulty of adequate identification. This difficulty, however, has to a large extent been overcome in World War II by the requirement of the Allied occupying powers of the reporting of such property by the enemy. Thus, the enemy ownership and serial numbers of the bonds can be readily established.

Canada. *Randfontein Gold Mining Co.* v. *Custodian of Enemy Property,* [1923] So. Afr. L.R., App. Div. 576; *Sutherland* v. *Administrator of German Property* [1934] Court of Appeal, 103 L.J. (K.B.) 244, [1934] 1 K.B. 423; 50 T.L.R. 107, 150 L.T.R. 247; *Canadian Revised Regulations Respecting Trading with the Enemy* (1943).[8]

The rule that the bond itself is to be treated as the property, and that the "situs" of the obligation is the location of the paper, is admittedly a fiction and a statement of the results courts have reached in other contexts for reasons of policy. See the dissenting opinion of Mr. Justice Stone in *First National Bank* v. *Maine,* 284 U.S. 312, 332, overruled by *State Tax Comm'n* v. *Aldrich,* 316 U. S. 174. The concept of "situs" is not to be employed to thwart the policy of the United States. *United States* v. *Pink,* 315 U.S. 203, 234, 240.

In the analogous situation of the seizure of intangible obligations represented by stock certificates, this Court has upheld the authority of the Custodian to seize though the certificates are be-

[8] The Canadian regulations provide for the vesting of "all enemy property." (Reg. 21(1)). "Property" is defined to include securities (Reg. 1(i)) which in turn are defined to extend to:

"* * * bonds, debentures * * * or other obligations or rights, whether registered or in bearer form * * * and whether the place of registration or the situs of the certificates or other instruments representing the securities is in Canada or not."

Cf. *Bitter* v. *Secretary of State of Canada* (1944) 3 Dom. L.R. 482 (Exch.); *Braun* v. *The Custodian* (1944) 3 Dom. L.R. 412 (Exch.), appeal dismissed, (1944) 4 Dom. L.R. 209 (S. Ct.).

yond his reach. *Silesian-American Corp.* v. *Clark*, 332 U.S. 469; *Great Northern Ry.* v. *Sutherland*, 273 U.S. 182. The same result has been reached even when the certificates are endorsed in blank and hence pass by delivery. *Schrijver* v. *Sutherland*, 19 F. 2d 688 (C.A.D.C.); *B. & O. R. Co.* v. *Sutherland*, 18 F. 2d 560 (C.A. 4).*

Viewed against the decisions under the Act ratifying the seizure of intangibles, the decision below does not reach a novel result and, we submit, calls for no further review.

2. Given a plain Congressional purpose to authorize the Custodian to enforce an obligation of a domestic corporation even though that obligation is evidenced by a negotiable bond which may be held abroad, it is submitted that there is no constitutional obstacle to the enforcement by the Custodian of that obligation.

Congress has done everything within its power

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* If the Act confers upon the Custodian the authority to vest the obligations in suit, there can be no question of his power to require cancellation of the outstanding bonds and the issuance of new ones. *Silesian-American Corp.* v. *Clark*, 332 U.S. 469. Nor can the provisions of the indentures under which the bonds were issued or those of the Negotiable Instruments Law justify the failure to comply with that requirement. "Federal officers and Federal courts are not dependent upon State legislation for power to lay hold of property." *Miller* v. *United States*, 11 Wall. 268, 297; *Columbia Brewing Co.* v. *Miller*, 281 Fed. 289, 291 (C.A. 5). Any inconsistent provision of state law, such as the Negotiable Instruments Law or the Stock Transfer Act, must yield. *Silesian-American Corp.* v. *Clark*, *supra*; *Gt. Northern Ry.* v. *Sutherland*, 273 U.S. 182; *Central Hanover Bk. & Trust Co.* v. *Markham*, 68 F. Supp. 829, 831-832 (S.D.N.Y.).

to immunize petitioners from the risk of being held liable a second time. Sections 5(b)(2) and 7(e) of the Trading with the Enemy Act exonerate from liability any person turning over property or otherwise acting in compliance with any requirement made pursuant to the Act. Under such circumstances, it is submitted that enforcement of petitioners' obligations is not to be frustrated by their fears that a foreign court may deny effect to these exculpatory provisions.[10]

The very reach of petitioners' constitutional argument suggests its infirmity. For possibilities of double liability such as petitioners envisage are not peculiar to cases, like this, involving a negotiable instrument possibly held abroad. No reason is apparent why such possibilities could not be tendered as reason for holding the Trading with the Enemy Act invalid in every instance in which suit is brought to compel a bailee, trustee, agent or obligor to comply with a vesting order, if the defendant or his property might come within the jurisdiction of a foreign court. If an assurance of non-liability abroad—an assurance Congress cannot grant—were essential to the validity of seizures under the Act, one would suppose that in the course of the long history of alien property

[10] There is no question but that these provisions adequately protect the petitioners against suit in any court of the United States by a holder of these bonds. *Silesian-American Corp.* v. *Clark*, 332 U.S. 469; *Gt. Northern Ry.* v. *Sutherland*, 273 U.S. 182; *American Exch. Natl. Bank* v. *Garvan*, 273 Fed. 43, 47 (C.A. 2), affirmed *sub nom. Simon* v. *American Exch. Nat. Bank*, 260 U.S. 706.

seizures, that point would have been made and Congress put to the choice of providing recourse for one who might twice be held liable or foregoing seizures as a weapon of economic warfare.

The Constitution forced no such choice upon the Congress. This Court has held, in very similar circumstances, that whether provision should be made for relief against foreign liability is a question for decision by Congress, and that the absence of such provision is no bar to enforcement of a federal statute. In *Railroad Co.* v. *Collector,* 100 U.S. 595, an early form of "withholding tax" on interest or dividends was upheld against the objection that the company might not be protected abroad. The Court, in an opinion by Mr. Justice Miller, said (100 U.S. at 598-599):

> Whether, as a question of international law, this declaration would relieve the corporation from the obligation to pay its foreign bondholder the full sum for which it contracted, we need not discuss; for this court, on all such subjects, is bound by the legislative and political departments of its own government. * * * being lawfully assessed and paid, it cannot be recovered back by reason of any inefficiency or ethical objection to the remedy over against the bondholder.

The fact that, following World War I, suits by former enemy nationals in the courts of their own country or elsewhere for seizures by the Custodian were outlawed by the Treaty of Berlin,[11]

[11] 42 Stat. 1939, 1948. See *United States* v. *Chemical Foundation,* 272 U.S. 1, 11; *Klein* v. *Palmer,* 18 F. 2d 932 (C.A. 2).

tends to confirm this Court's apparent belief, expressed in *Railroad Co.* v. *Collector, supra,* that the problem of potential foreign liability should be resolved in the diplomatic sphere and not in terms of constitutional law. This view would seem to be implicit also in Section 40 of the Trading with the Enemy Act (Act of Sept. 28, 1950, c. 1094, 64 Stat. 1079, 50 U. S. C. App., Supp. IV, 40 *infra,* p. 21), which authorizes the negotiation of agreements to settle "intercustodial conflicts" concerning enemy property. The Brussels Agreement, to which the United States and five other countries are parties and the signing of which was authorized by Section 40, attempts to resolve such questions as may arise when, for example, the United States vests the obligation evidenced by a bond of American issue and France seizes the bond itself. Article 1 of the Annex to the Agreement relates to securities, including bonds, and provides that the country in which the security was issued shall be entitled to retain the underlying obligation as against the country in which the paper is located.[12]

It should be noted, moreover, that the foreign liability of the petitioners is hypothetical and may never materialize. The bonds in question are payable in the United States (see p. 2 of each indenture), and foreign courts may hold that the bonds were intended to be governed by our law. See the

[12] The text of the Agreement is set forth in State Dept. Bull., Jan. 4, 1948, Vol. 18, No. 444, p. 6; Article I of the Annex appears on page 7. For announcement of the going into effect of the Agreement, see State Dept. Bull., Feb. 19, 1951, Vol. 24, No. 607, p. 293.

foreign "gold clause" decisons discussed in *Compania de Inver. Int.* v. *Industrial Mtge. Bank*, 269 N.Y. 22, 198 N.E. 617; to the same effect, *Hartmann* v. *United States*, 106 Ct. Cl. 686, 65 F. Supp. 397, certiorari denied, 330 U.S. 842. The courts of the United States, at least, have regarded it as a well-settled rule of international law that the courts of one country will not sit in judgment on the acts of the government of another done within its own territory (*Oetjen* v. *Central Leather Co.*, 246 U.S. 297, 303-304; *United States* v. *Pink*, 315 U.S. 203, 233; *Bernstein* v. *Van Heyghen Freres*, 163 F. 2d 246 (C.A. 2), certiorari denied, 332 U.S. 772), and have applied that rule in cases of foreign reorganizations of corporations (*Canada Southern Ry. Co.* v. *Gebhard*, 109 U.S. 527, 536) and foreign seizures under a statute equivalent to the Trading with the Enemy Act. *Disconto-Gesellschaft* v. *United States Steel Corporation*, 300 Fed. 741 (S.D.N.Y.), affirmed, 267 U.S. 22.

Thus it appears not only that petitioners have, as yet, not been subjected to a second liability abroad but that they may never be. If there is no second liability, the question of what remedies are available if such is imposed is not presented for decision.[13]

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[13] In their statement of the questions presented (Pet. 5-6), petitioners suggest that the vesting of foreign held bonds may deprive a non-enemy bondholder of his property without notice or opportunity to be heard. Whatever rights the bondholder may have, clearly petitioners have no standing vicariously to assert them. *Silesian-American Corp.* v. *Clark*, 332 U.S. 469, 474.

CONCLUSION

The court below correctly reversed the decision of the district court denying the Custodian the relief sought. There is no conflict of decisions. The petition should be denied.

Respectfully submitted,

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APPENDIX

Trading with the Enemy Act, c. 106, 40 Stat. 411, as amended, 50 U.S.C. App. 1, *et seq.*:

SEC. 7.

(a) * * *

Any person in the United States who holds or has or shall hold or have custody or control of any property beneficial or otherwise, alone or jointly with others, of, for, or on behalf of an enemy or ally of enemy, or of any person whom he may have reasonable cause to believe to be an enemy or ally of enemy and any person in the United States who is or shall be indebted in any way to an enemy or ally of enemy, or to any person whom he may have reasonable cause to believe to be an enemy or ally of enemy, shall, with such exceptions and under such rules and regulations as the President shall prescribe, and within thirty days after the passage of this Act, or within thirty days after such property shall come within his custody or control, or after such debt shall become due, report the fact to the Alien Property Custodian by written statement under oath containing such particulars as said custodian shall require. * * *

(b) Nothing in this Act contained shall render valid or legal, or be construed to recognize as valid or legal, any act or transaction constituting trade with, to, from, for or on account of, or on behalf or for the benefit of an enemy performed or engaged in since the beginning of the war and prior to the passage of this Act or any such act or transaction hereafter performed or en-

gaged in except as authorized hereunder, which would otherwise have been or be void, illegal, or invalid at law. No conveyance, transfer, delivery, payment, or loan of money or other property, in violation of section three hereof, made after the passage of this Act and not under license as herein provided shall confer or create any right or remedy in respect thereof; and no person shall by virtue of any assignment, indorsement, or delivery to him of any debt, bill, note, or other obligation or chose in action by, from, or on behalf of, or on account of, or for the benefit of an enemy or ally of enemy have any right or remedy against the debtor, obligor, or other person liable to pay, fulfill, or perform the same unless said assignment, indorsement, or delivery was made prior to the beginning of the war or shall be made under license as herein provided, or unless, if made after the beginning of the war and prior to the date of passage of this Act, the person to whom the same was made shall prove lack of knowledge and of reasonable cause to believe on his part that the same was made by, from or on behalf of, or on account of, or for the benefit of an enemy or ally of enemy; and any person who knowingly pays, discharges, or satisfies any such debt, note, bill, or other obligation or chose in action shall, on conviction thereof, be deemed to violate section three hereof. * * *

* * * * * *

(e) No person shall be held liable in any court for or in respect to anything done or

omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act.

Any payment, conveyance, transfer, assignment, or delivery of money or property made to the Alien Property Custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of same. The Alien Property Custodian and such other persons as the President may appoint shall have power to execute, acknowledge, and deliver any such instrument or instruments as may be necessary or proper to evidence upon the record or otherwise such aquittance and discharge, and shall, in case of payment to the Alien Property Custodian of any debt or obligation owed to an enemy or ally of enemy, deliver up any notes, bonds, or other evidences of indebtedness or obligation, or any security therefor in which such enemy or ally of enemy had any right or interest that may have come into the possession of the Alien Property Custodian, with like effect as if he or they, respectively, were duly appointed by the enemy or ally of enemy, creditor, or obligee.

SEC. 9.

* * * * *

(n) In the case of property consisting of stock or other interest in any corporation, association, company, or trust, or of bonded or other indebtedness thereof, evidenced by certificates of stock or by bonds or by other certificates of interest therein or indebtedness thereof, or consisting of dividends or

interest or other accruals thereon, where the right, title, and interest in the property (but not the actual certificate or bond or other certificate of interest or indebtedness) was conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, or seized by him, if the President determines that the owner thereof or of any interest therein has acquired such ownership by assignment, transfer, or sale of such certificate or bond or other certificate of interest or indebtedness, (it being the intent of this subsection that such assignment, transfer, or sale shall not be deemed invalid hereunder by reason of such conveyance, transfer, assignment, delivery, or payment to the Alien Property Custodian or seizure by him) and that the written consent provided for in subsection (m) has been filed, then the President may make in respect of such property an order of the same character, upon the same conditions, and with the same effect, as in cases provided for in subsection (b), including the benefits of subsection (c).

SEC. 40 [50 U. S. C. App., Supp IV, 40]. The President, or such officer or agency as he may designate, is authorized to conclude and give effect to agreements to further the amicable and expeditious settlement of intercustodial conflicts involving enemy property * * *

☆ U. S. Government Printing Office, 1951 J960697/280